

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ALEX DANIEL TARABOCHIA, et al.,

Plaintiffs,

v.

MICKEY ADKINS, et al.,

Defendants.

CASE NO. C10-5197 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFFS' MOTION TO
AMEND THE COMPLAINT

This matter comes before the Court on Plaintiffs Alex Daniel Tarabochia and Matthew Alexander Tarabochia's ("Tarabochias") motion to amend the complaint (Dkt. 119). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion in part and denies it in part for the reasons stated herein.

I. PROCEDURAL HISTORY

On December 23, 2014, the Court issued an Order Setting Jury Trial and Pretrial Dates and set February 2, 2015 as the deadline for amending pleadings. Dkt. 104.

1 On January 26, 2015, the Tarabochias filed a motion to amend the complaint. Dkt.
2 110. On March 9, 2015, the Court denied the motion without prejudice because the
3 Tarabochias failed to attach a copy of the proposed complaint to the motion. Dkt. 115.

4 On March 18, 2015, the Tarabochias filed the instant motion and a proposed
5 amended complaint. Dkt. 119. On March 27, 2015, Defendants Mike Cenci, Dan
6 Chadwick, Brett Hopkins, and Brad Rhoden (“Defendants”) responded. Dkt. 121. On
7 May 4, 2015, the Tarabochias replied. Dkt. 124

8 II. DISCUSSION

9 Defendants ask the Court to deny the Tarabochias’ motion to amend because it
10 was filed after the relevant deadline, the Tarabochias have failed to show cause for their
11 tardiness, and the proposed amendments are at least partially futile. Dkt. 121.

12 With regard to the timing of the motion, the Court finds that there is good cause to
13 accept the motion. Although all parties, including parties proceeding pro se, must abide
14 by the rules of procedure, the Court denied the Tarabochias’ first motion to amend
15 without prejudice. Defendants were aware of the motion and the likelihood that another
16 motion would be filed. Thus, Defendants are not prejudiced, and the Court will consider
17 the merits of the motion.

18 With regard to the merits, the Tarabochias seek leave to add claims for special
19 damages from 2003 through 2015. Dkt. 119-1 at 9. Defendants argue that damages
20 should at least be limited for the period before the date of the alleged violation, which
21 was March 23, 2007. Dkt. 121. The Court agrees. Although the Tarabochias’ reply is
22 extremely late, the Court will accept it because it shows that the Tarabochias intend to

1 seek damages for actions leading up to the March 23, 2007 stop. Dkt. 124. However,
2 any such claim for damages is futile. The Ninth Circuit upheld the Court's dismissal of
3 the Tarabochias' Fourteenth Amendment claim based on repetitive government behavior
4 that "shocks the conscience." *Tarabochia v. Adkins*, 766 F.3d 1115, 1129 (9th Cir.
5 2014). Thus, the only claim left is for damages that flow from the Defendants' actions on
6 March 23, 2007. While evidence of past business performance may be relevant to the
7 issue of damages that flow from the relevant stop, the Tarabochias are precluded from
8 seeking damages for any act other than the relevant stop.

9 **III. ORDER**

10 Therefore, it is hereby **ORDERED** that the Tarabochias' motion to amend the
11 complaint (Dkt. 119) is **GRANTED in part** and **DENIED in part**. The Tarabochias
12 shall amend the complaint to limit damages from March 23, 2007 forward and file the
13 amended complaint as a separate entry on the docket.

14 Dated this 12th day of May, 2015.

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18 **BENJAMIN H. SETTLE**
19 United States District Judge
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